

Senate Study Bill 1018 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED BOARD OF MEDICINE
BILL)

A BILL FOR

1 An Act relating to disciplinary procedures before the board of
2 medicine.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 148.7, Code 2015, is amended to read as
2 follows:

3 **148.7 Procedure for licensee discipline.**

4 A proceeding for the revocation or suspension of a license
5 to practice medicine and surgery or osteopathic medicine and
6 surgery, or acupuncture or to discipline a person licensed
7 to practice medicine and surgery or osteopathic medicine and
8 surgery, or acupuncture shall be substantially in accord with
9 the following procedure and with section 272C.6, subsection
10 4, to the extent the provisions in that subsection are not
11 inconsistent with this section:

12 1. The board may, upon its own motion or upon receipt of
13 a complaint ~~in writing~~, order an investigation. The board
14 may, upon its own motion, order a hearing. A written notice
15 of the time and place of the hearing together with a statement
16 of the charges shall be served upon the licensee at least ten
17 days before the hearing in the manner required for the service
18 of notice of the commencement of an ordinary action or by
19 restricted certified mail.

20 2. If the whereabouts of the licensee is unknown, service
21 may be had by publication as provided in the rules of civil
22 procedure upon filing the affidavit required by the rules.
23 In case the licensee fails to appear, either in person or
24 by counsel at the time and place designated in the notice,
25 the board shall proceed with the hearing as provided in this
26 section.

27 3. ~~a. The hearing shall be before a member or members~~
28 ~~designated by the board or before an administrative law~~
29 ~~judge appointed by the board according to the requirements of~~
30 ~~section 17A.11, subsection 1. The presiding board member or~~
31 ~~administrative law judge may issue subpoenas, administer oaths,~~
32 ~~and take or cause depositions to be taken in connection with~~
33 ~~the hearing. The presiding board member or administrative law~~
34 ~~judge shall issue subpoenas at the request and on behalf of the~~
35 ~~licensee.~~

1 ~~b. The administrative law judge shall be an attorney vested~~
2 ~~with full authority of the board to schedule and conduct~~
3 ~~hearings. The administrative law judge shall prepare and file~~
4 ~~with the board the administrative law judge's findings of~~
5 ~~fact and conclusions of law, together with a complete written~~
6 ~~transcript of all testimony and evidence introduced at the~~
7 ~~hearing and all exhibits, pleas, motions, objections, and~~
8 ~~rulings of the administrative law judge.~~

9 At the sole discretion of the board, a disciplinary hearing
10 shall be held before one of the following:

11 a. A quorum of the board. A quorum of the board shall
12 include not less than six members, at least half of whom are
13 board members, and the remaining alternate members appointed
14 pursuant to section 148.2A, with no more than half of the
15 quorum being public members or alternate members of the board.

16 b. A panel of not less than three board members, at least
17 two of whom are licensed in the profession.

18 c. A panel of not less than three specialists appointed
19 pursuant to section 272C.6, subsection 2.

20 d. An administrative law judge. The decision to assign
21 an administrative law judge shall be within the sole
22 discretion of the board. The board may only assign cases to
23 an administrative law judge to serve as the presiding officer
24 at hearing that involve allegations of one or more violations
25 of the laws or rules governing the practice of medicine which
26 do not involve a standard of medical care determination,
27 professional practice, medical ethics, sexual misconduct, or
28 impairment. The board may assign cases involving issues of
29 law and administrative violations including but not limited
30 to violations of a board order, violations of an initial
31 agreement or contract entered into with the Iowa physician
32 health committee, disciplinary action by another licensing
33 board or regulatory authority, and criminal convictions. The
34 board shall define by rule those cases which may be assigned
35 to an administrative law judge, and the process for using

1 an administrative law judge as the presiding officer. The
2 administrative law judge shall be assigned by the division of
3 administrative hearings pursuant to section 10A.801, and shall
4 be vested with full authority of the board to schedule and
5 conduct hearings.

6 ~~4. Disciplinary hearings held pursuant to section 272C.6,~~
7 ~~subsection 1, shall be heard by the board, or by a panel of~~
8 ~~not less than six members, at least three of whom are board~~
9 ~~members, and the remaining appointed pursuant to section~~
10 ~~148.2A, with no more than three of the six being public~~
11 ~~members. Notwithstanding chapters 17A and 21, a disciplinary~~
12 ~~hearing shall be open to the public at the discretion of the~~
13 ~~licensee.~~

14 5. The presiding officer may issue subpoenas, administer
15 oaths, and take or cause depositions to be taken in connection
16 with the hearing. The presiding officer shall issue subpoenas
17 at the request and on behalf of the parties. If a person
18 refuses to obey a subpoena issued by the presiding officer or
19 to answer a proper question during the hearing, the presiding
20 officer may invoke the aid of the district court in requiring
21 the attendance and testimony of a person or the production
22 of papers. A failure to obey the order of the court may be
23 punished by the court as a civil contempt.

24 6. A record of the proceedings shall be kept. The licensee
25 shall have the opportunity to appear personally and by an
26 attorney, with the right to produce evidence on the licensee's
27 own behalf, to examine and cross-examine witnesses, and to
28 examine documentary evidence produced against the licensee.

29 ~~6. If a person refuses to obey a subpoena issued by the~~
30 ~~presiding member or administrative law judge or to answer a~~
31 ~~proper question during the hearing, the presiding member or~~
32 ~~administrative law judge may invoke the aid of a court of~~
33 ~~competent jurisdiction or judge of this court in requiring~~
34 ~~the attendance and testimony of the person and the production~~
35 ~~of papers. A failure to obey the order of the court may be~~

~~1 punished by the court as a civil contempt may be punished.~~

2 7. Unless the hearing is held before a quorum of the entire
3 board, the presiding officer shall prepare and file with the
4 board the proposed findings of fact, conclusions of law, and
5 decision and order, with a complete written transcript of the
6 proceeding, together with all exhibits presented, shall be
7 ~~considered by the entire board at the earliest practicable time~~
8 pleadings, motions, objections, and rulings within sixty days
9 of the date of the hearing absent compelling circumstances.

10 ~~The licensee and the licensee's attorney shall have the~~
11 ~~opportunity to appear personally to present the licensee's~~
12 ~~position and arguments to the board. The board shall determine~~
13 ~~the charge or charges upon the merits on the basis of the~~
14 ~~evidence in the record before it.~~

15 8. The proposed findings of fact, conclusions of law, and
16 decision and order may be appealed to the full board by either
17 party by serving on the executive director, either in person or
18 by certified mail, a notice of appeal within thirty days after
19 service of the proposed findings of fact, conclusions of law,
20 and decision and order on the appealing party.

21 9. If a majority of the members of the board vote in favor
22 of finding the licensee guilty of an act or offense specified
23 in section 147.55 or 148.6, the board shall prepare written
24 findings of fact ~~and its decision,~~ conclusions of law, and
25 a decision and order imposing one or more of the following
26 disciplinary measures:

27 a. Suspend the licensee's license to practice the profession
28 for a period to be determined by the board.

29 b. Revoke the licensee's license to practice the profession.

30 c. Suspend imposition of judgment and penalty or impose
31 the judgment and penalty, but suspend enforcement and place
32 the physician or licensed acupuncturist on probation. The
33 probation ordered may be vacated upon noncompliance. The board
34 may restore and reissue a license to practice medicine and
35 surgery or osteopathic medicine and surgery, or acupuncture,

1 but may impose a disciplinary or corrective measure which the
2 board might originally have imposed. A copy of the board's
3 ~~order~~, findings of fact, conclusions of law, and decision and
4 order, shall be served on the licensee in the manner of service
5 of an original notice or by certified mail return receipt
6 requested.

7 ~~9.~~ 10. Judicial review of the board's action may be
8 sought in accordance with the terms of the Iowa administrative
9 procedure Act, chapter 17A.

10 ~~10.~~ 11. The board's order revoking or suspending a license
11 to practice medicine and surgery or osteopathic medicine
12 and surgery, or acupuncture, or to discipline a licensee
13 shall remain in force and effect until the appeal is finally
14 determined and disposed of upon its merit.

15 EXPLANATION

16 The inclusion of this explanation does not constitute agreement with
17 the explanation's substance by the members of the general assembly.

18 This bill relates to disciplinary procedures before the
19 board of medicine. The bill rewrites the existing provisions
20 to provide additional detail. The bill specifies that the
21 procedures for licensee discipline in Code section 148.7 apply
22 to persons licensed to practice acupuncture.

23 The bill specifies that a disciplinary hearing may be
24 presided over by any of the following, at the discretion
25 of the board: a quorum of the entire board; a panel of at
26 least three board members; a panel made up of specialists;
27 or an administrative law judge. The bill rewrites existing
28 provisions relating to the power of the presiding officer to
29 issue subpoenas and the enforcement of those subpoenas.

30 The bill allows an administrative law judge to preside
31 at certain contested cases, when those cases do not require
32 medical expertise or involve sexual misconduct or impairment.
33 The bill codifies in Code chapter 148 provisions that are
34 generally set out in Code chapter 17A relating to the decision
35 in a contested case. If a quorum of the entire board hears the

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1 case, the board decision is final agency action. If less than
2 a quorum or an administrative law judge hears the case, the
3 decision may be appealed to the entire board.